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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CECIL DEWAYNE DEMERY,

Defendant and Appellant.

C085812

(Super. Ct. No. 17FE009952)

Appointed counsel for defendant Cecil Dewayne Demery has filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) After reviewing the record, we modify the judgment to include certain mandatory fees and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On May 26, 2017, defendant, defendant's uncle, aunt, and mother spent the night at mother's residence.

The next morning, defendant's girlfriend arrived and went into the bedroom. Defendant's mother and aunt left to visit their mother. Defendant approached his uncle, who was sitting at the kitchen table, and asked if he was okay. The uncle replied yes, defendant returned to the bedroom, and his uncle started playing dice. An hour later, defendant reemerged from the bedroom and asked his uncle about his laptop, which defendant had from the night before. The uncle said he could not understand defendant, and defendant began punching his uncle in the face with enough force to cause him to fall off his chair and onto the floor. Defendant punched his uncle at least 10 times and then stopped. The uncle, who was bleeding and suffering from swollen eyes, went to the bathroom to clean himself up, and defendant returned to the bedroom. Half an hour later, defendant reemerged from the bedroom carrying two three-foot-long wooden bedframe slats, as if to hit his uncle. Defendant grabbed his uncle's phone and accused him of calling someone. His uncle told defendant to calm down, and defendant returned to his bedroom.

Thirty minutes later, defendant's mother and aunt came home. The uncle, who was still bleeding and could barely see, explained what happened, and the aunt called 911. Defendant's mother told defendant and his girlfriend to leave, and defendant grabbed his mother's car keys and headed to the car. The mother followed and retrieved the car keys. The uncle, who was standing outside with the aunt, subsequently saw defendant sitting with his girlfriend in the mother's car, as though they were also trying to leave.

When the police arrived, the uncle spoke with them and was taken to the hospital for treatment for lacerations on his face, a broken tooth and nose, and swollen eyes. The uncle required stitches and a root canal for his broken tooth. Photos of his injuries were shown to the jury during trial.

In September 2017, a jury convicted defendant of misdemeanor battery (Pen. Code, § 242; count one)¹ and assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4); count two). In October 2017, the trial court sentenced defendant to state prison for an aggregate term of three years, as follows: three years for count two and six months for count one, stayed pursuant to section 654. The trial court imposed a \$300 restitution fine (§ 1202.4, subd. (b)), a corresponding \$300 parole revocation fine, suspended unless parole is revoked (§ 1202.45), plus a \$150 restitution fine (§ 1202.4, subd. (b)(1)). In addition, the trial court imposed a \$367.81 main jail booking fee and a \$67.03 main jail classification fee (Gov. Code, § 29550.2). The trial court awarded defendant 280 days custody credit.

The abstract of judgment also lists a \$40 court security fee (§ 1465.8) and a \$30 conviction assessment fee (Gov. Code, § 70373).

DISCUSSION

Appointed counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no such communication from defendant.

Our review of the record revealed that the abstract of judgment lists a \$40 court security fee (§ 1465.8) and a \$30 conviction assessment fee (Gov. Code, § 70373), even though the trial court did not impose these fees during the sentencing hearing. Generally, an oral pronouncement of judgment controls (*People v. Mitchell* (2001) 26 Cal.4th 181, 185), but, where fines are mandatory, “their omission may be corrected for the first time on appeal.” (*People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1530.) We shall order

¹ Undesignated statutory references are to the Penal Code in effect at the time of the charged offenses.

the judgment modified. We find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified to impose a \$40 court security fee (§ 1465.8) and a \$30 conviction assessment fee (Gov. Code, § 70373). As modified, the judgment is affirmed.

/s/
MURRAY, Acting P. J.

We concur:

/s/
DUARTE, J.

/s/
HOCH, J.